FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 23, 2005

In Reply Refer To:
Columbia Gulf Transmission Company
Docket No. RP06-49-000

Columbia Gulf Transmission Company
12801 Fair Lakes Parkway
P.O. Box 10146
Fairfax, Virginia 22030-0146

Attention: Carl W. Levander, Vice President

Reference: Revisions to Penalty Provisions

Dear Mr. Levander:

1. On October 25, 2005, Columbia Gulf Transmission Company (Columbia Gulf) filed Seventh Revised Sheet No. 216 to replace its existing fixed price penalties with penalties based on three times a daily index price for shippers who take in excess of Total Firm Entitlements (TFE) during critical periods, fail to interrupt service, or fail to comply with Operational Flow Orders (OFOs). The Commission accepts the tariff sheet effective November 24, 2005, as proposed.

2. Notice of Columbia Gulf's filing was issued on October 27, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Indicated Shippers,[1] the Lafayette Utilities System (Lafayette) and Process Gas Consumers Group (PGC) filed protests, while Amerada Hess Corporation (Amerada

[1] The Indicated Shippers joining in this protest are: BP America Production Company and BP Energy Company, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Gas & Power marketing Company (A Division of ExxonMobil Corporation) and Shell Offshore Inc.

Hess) and South Jersey Gas Company (South Jersey) filed comments to the filing. Indicated Shippers requested that a technical conference be held. Columbia Gulf filed an answer to the protests and comments.[2] These pleadings are discussed below. Baltimore Gas and Electric Company filed a motion to intervene, which included a statement in support of the filing.

3. Section 19 of the General Terms and Conditions (GT&C) of Columbia Gulf's tariff currently provides that if a shipper takes gas in excess of the TFE, Columbia Gulf shall assess a penalty of $10.00 per Dth. Section 19.2 of the GT&C provides that if a shipper fails to interrupt service when ordered to do so by the pipeline, Columbia Gulf shall assess a penalty of $5.00 per Dth for the first three percent in excess of the shipper's lowered Scheduled Daily Receipt Quantity or lowered Scheduled Daily Delivery Quantity, and $10.00 per Dth for quantities in excess of 103 percent. Section 19.3 of the GT&C provides that if a shipper fails to comply with an OFO, Columbia Gulf shall assess a penalty of $5.00 per Dth.

4. Columbia Gulf asserts that, with the significant increases in natural gas prices of the last several years, the currently effective penalties may no longer be enough to deter shippers from violating tariff-based protections that are in place to preserve system integrity. Therefore, in the instant filing, Columbia Gulf proposes to remove these penalty provisions, and institute instead a penalty equal to three times the midpoint of the range of prices reported for "Columbia Gulf, Louisiana" as published in the daily price survey by Platts' *Gulf Daily*.

5. On November 19, 2004, the Commission issued its *Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets*,[3] which determined that weekly indices should meet at least one of four criteria, one of which was that the average daily volume traded at the index location was at least 25,000 Dth of gas per day. In the instant filing, Columbia Gulf has submitted data documenting that over a ninety-day period, an average of 299,000 Dth per day are traded at "Columbia Gulf, Louisiana."

6. The protestors question the operational need for these revised penalties, arguing that the revised penalty provisions are contrary to established Commission policy that a pipeline may include a penalty in its tariff only to the extent necessary to prevent the impairment of reliable service, and any such penalty must be "narrowly designed." The protestors argue that a penalty level of three times an index price would be excessive, and

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[2] While the Commission's rules of Practice and Procedure generally prohibit answers to comments, the Commission will accept Columbia Gulf's answer to allow a fuller understanding of the issues. *See* 18 C.F.R. § 385.213(a)(2) (2005).

[3] 109 FERC ¶ 61,184 (2004).

that it is Columbia Gulf's burden to show that its alternative to a capped penalty structure is just and reasonable and narrowly tailored to deter conduct detrimental to its system operations. Amerada Hess states that it understands current natural gas prices necessitate a change in the current penalties, but proposes instead that Columbia Gulf take the existing flat penalties of $5.00 and $10.00 per Dth, and have them serve as an adder to 100 percent of the index price. Amerada Hess asserts that this would allow Columbia Gulf to be protected from high prices and volatility of the natural gas market, while not over penalizing shippers on their system. PGC also proposes two alternative index-based penalties. South Jersey objects to the filing, asserting that the proposed penalty increase is unnecessary. South Jersey argues that there is simply no valid basis for Columbia Gulf to propose tripling the existing penalties in order to respond to increases in natural gas prices or to protect system integrity. South Jersey asserts that the existing provisions are intended to ensure prudent attention to and use of the pipeline services, but that as proposed, they become a mechanism to collect excessive charges. Lafayette protests that because the proposed penalties may be imposed in situations that are not emergencies, the provisions have an excessively punitive effect for activities that do not threaten reliability. Lafayette also protests the tariff language found in sections 19.1 and 19.2 of the GT&C of Columbia Gulf's tariff as allowing the pipeline fairly broad discretion to declare operational problems that might warrant imposition of the proposed penalties.

7. In its answer, Columbia Gulf asserts that the arguments presented in opposition to the proposed index price based penalty cannot be reconciled with established precedent or the material facts. Columbia Gulf asserts that the parties ignore the steady, dramatic increases in natural gas prices, as well as the necessity for penalties that prevent conduct that will have a detrimental impact on system reliability and integrity. Columbia Gulf states that the index price based penalty proposal is based on the plain realities of the existing market and current events.

8. In response to Indicated Shippers' argument that Columbia Gulf's index price based penalty proposal is contrary to the Commission's "de-emphasis" on the use of penalties under Order No. 637,[4] Columbia Gulf notes that the Commission emphasized in Order No. 637-A that penalties remain "an appropriate tool to protect system reliability."[5] Columbia Gulf asserts that its proposed penalty increase is designed to prevent the impairment of reliable service in compliance with section 284.12(b)(2)(v) of the Commission's regulations.

[4] Columbia Gulf cites Indicated Shippers Protest at 5.

[5] Columbia Gulf cites *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637-A, FERC Stats. & Regs., Regs. Preambles [1996-2000] ¶ 31,099, at 31,607 (2000).

9. In response to the parties' assertions that Columbia Gulf's proposed penalties are excessive,[6] Columbia Gulf argues that the penalty increases are designed to provide appropriate incentives for shippers to comply with the tariff-based protections that are designed to preserve system integrity. Columbia Gulf maintains that, when considered relative to the market price of natural gas, the level of proposed penalties is appropriate.

10. Finally, Columbia Gulf argues that the majority of Lafayette's protest to the revisions to the TFE and failure to interrupt penalties amount should be denied as an inappropriate collateral attack on the Commission's orders approving the subject tariff provisions. Columbia Gulf asserts that the issues raised by Lafayette pertain to the language and application of sections 19.1 and 19.2, not the increase in penalties proposed by Columbia Gulf's filing. As a result, Columbia Gulf concludes that Lafayette's concerns are misplaced and should be rejected by the Commission.

11. The Commission finds that Columbia Gulf's proposed change in the level of the subject penalties is reasonable. As required in Columbia Gulf's Order No. 637 proceeding, section 19.1 provides that the unauthorized overrun penalty will be waived if the unauthorized overrun did not cause an operational problem.[7] The penalties under sections 19.2 and 19.3 are only applied when a notice is issued pursuant to GT&C sections 16 and 17, *i.e.*, they are by definition invoked only when there are specified operational problems. In the instant filing, Columbia Gulf proposed only to revise the level of these penalties. The Commission has consistently approved high penalties to deter conduct that might threaten pipeline operations.[8] Given the current increased gas prices and the potential for prices to continue rising, Columbia Gulf could reasonably conclude that its current fixed penalties may no longer act as an effective deterrent to actions that might threaten pipeline operations. Columbia Gulf's proposed penalty provisions, based on multiples of price indices, are similar to others the Commission has

[6] Columbia Gulf cites, *e.g.*, Indicated Shippers Protest at 7, PGC Protest at 3, Amerada Hess Comments at 3, South Jersey Motion at 2.

[7] 104 FERC ¶ 61,035 at P 50 (2003).

[8] *Paiute Pipeline Co.*, 111 FERC ¶ 61,107, at P 8 (2005)(*Paiute*).

approved and found to be just and reasonable.[9] Although Amerada Hess or PGC may have a viable alternative, it has not shown that Columbia Gulf's proposal is unjust and unreasonable. Further, penalty revenues are credited to shippers who abide by Columbia Gulf's tariff, and do not generate any profit for Columbia Gulf. Finally, the Commission finds that Columbia Gulf has adequately supported its proposed use of the "Columbia Gulf, Louisiana" index as reasonable and consistent with Commission's policy. Based on the foregoing, there is no need for further supporting information. Therefore, Indicated Shipper's request for a technical conference is denied. The Commission therefore accepts Columbia Gulf's revised tariff sheets effective November 24, 2005.

By direction of the Commission.

Magalie R. Salas,
Secretary.

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[9] See, *e.g.*, *Northwest Pipeline Corp*., 100 FERC ¶ 61,347, at P 77 (2002) (approving tariff containing Operational Flow Order penalty equal to the greater of $10.00/Dth or four times the highest absolute price reflected in the local daily price survey). The Commission has also approved OFO penalties per Dth equal to three times the midpoint of the range of prices reported for a published index price location in *Midwestern Gas Transmission Co.*, 112 FERC ¶ 61,345 (2005) and *Viking Gas Transmission Co.*, 112 FERC ¶ 61,098 (2005). Additionally, the Commission has approved index price based OFO penalties for other pipelines, *e.g.*, *Piaute*; *Southern Star Central Gas Pipeline, Inc.*, 107 FERC ¶ 61,071 (2004); and *Gulf South Pipeline Co., LP*, 104 FERC ¶ 61,160 (2003).